Supreme Court, U.S.
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IN THE UNITED STATES SUPREME COURT
October term 1997

Lars W. Ehrlander,
Petitioner

v.

The State of Alaska, DOT, et al.
Respondents

On Petition For Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Whether dismissing bifurcated and post trial issues on *res judicata* and the Eleventh Amendment, absent compensation, is permissible, when the State and its officers engaged in fraud, and **when due process was denied and abused in the state courts**.

LIST OF PARTIES

Mr. Lars W. Ehrlander, pro se petitioner.

v.

The State of Alaska, Department of Transportation, and Messers John Athens; Raymond Funk; John Miller; Donald Baum, in their personal and official capacities, and the Federal Highway Administration.

TABLE OF CONTENTS

	PAGE
Questions	I
List of Parties	II
Table of Contents	II
Table of Cited Authorities	III
Citations of Orders and Opinions	1
Statement of the bases for US Supreme Court Jurisdiction	1
Date of judgment	
Date of rehearing	
Statutory provision to confer jurisdiction to this Court to review	
Constitutional provisions, statutes and regulations	2
Statement of the case	3
Factual statement	3
Basis for federal jurisdiction in the court of first instance	7
Argument	7
Reasons for granting a Writ of Certiorari	7
Statement	7
The Bifurcation Agreement	10
Res judicata / Due Process	12
The Fifth Amendment	15
The Seventh Amendment	15
The Eighth Amendment	16
The Eleventh Amendment	16
The Thirteenth Amendment	16
The Fourteenth Amendment	17
The State's ignoring laws	18
1. The highest and best use	18
2. Development profit	18
3. Fair market value on date of taking	19

4. Neither AS 34.60.120(3) nor 49 CFR
Sec. 24.103(b) are written clearly 19
5. Damages 20
The Alaska Supreme Crt. taking on roll of fact finder 21
Right to jury 21
Civil Rights Violations 22
Constitutional violations 24
Appendices 25
Directory of Appendix A.1

TABLE OF CITED AUTHORITIES.

CASES

Bell v. Burson
402 US 535 (1971) 14, 17, 21

Board of Regents v. Roth
408 US 564 (1974) 17, 18, 22

Burlington Northern v. Nebraska Public Power Dist.
931 F Supp 1470 (D.Neb. 1996) 16

Carter v. Carter Coal Co.
298 US 342 (1935) 10, 24

City of Los Angeles v. Decker
558 P.2d 545 (Cal. 1977) 24

Defeo v. Sill
810 F.Supp 648 (ED PA 1993) 10, 24

State of Alaska v. 6.313 Acres, more or less and Lars W. Ehrlander
(Case 4FA-86-886) (First trial) 16

Ehrlander v. State DOT (Case 4FA-86-2287CI
["Lange test" sister case]) 16

First Ev. Chur. Glendale v. LA
482 US 304 (1987) 24

First Lutheran Church v. Los Angeles
482 US 304 (1984) 11, 14, 15, 19, 21

F. Giannini v. First National Bank of De Plains
483 NE 2d 924 (Ill. App. 1985) 20

Hafer v. Melo
502 US 21 (1991) 22

Howard v. Grinage
82 F.3d 1343 (6th Cir. 1996) 24

Hughes v. Washington
389 US 290, 298 (1967) 22

Irwin v. City of New York
902 F.Supp. 442 (S.D.N.Y. 1995) 22, 24

JB v. Washington County
905 F.Supp. 907 (D.Utah 1995) 21

Ketron v. Chattanooga - Hamilton County Hospital
919 F Supp 280 (E.D. Tenn. 1996) 22

Kirby Forest Industries, Inc. v US
467 US 304 (1984) 11, 15, 19

Lake Havasu Com. Hosp v. Ariz Title Ins.
687 P.2d 371 (Ariz. APP 1984) 20

Lange v. State of Washington
547 P2d 282 (Wa 1976) 18, 19

Logan v. Zimmerman Bruch Co
455 US 422 (1982) 12, 13, 14, 16, 27

Marden v. Intern. Ass'n of Machinist ETC
576 F2d 576 (1978) 20

Middlesex County Ethics Comm. v.Garden State Bar Ass'n
457 US 435 10

Parratt v. Taylor
451 US 524 (1981) 9, 10, 11, 12, 15, 16, 18, 21, 23, 24

Pedring v. Chun
906 F Supp 1377 (D. Hawaii 1995) 18, 20

Pruneyard Shopping Center v. Robins
447 US 74 (1980) 9, 22

Roberts v. NY
295 US 264 (1935) 17, 21, 22

Ruckelshaus v. Monsanto Co.
467 US 986 (1984) 15, 24

Sanfilippo v. County of Santa Cruz
415 F Supp 1340 (N.D.Cal. 1976) 22

Sheerbonnet, Ltd. v. American Express Bank, Ltd.
905 F.Supp. 127 (S.D.N.Y. 1995) 21

State v. Glen
602 P.2d 253 (OR. 1979)..... 23

State v. Lewis
785 P2d 24 (AK 1990) 23

State v. Terrace Land Co., INC.
298 So2d 859 (Loui. 1974) 19

State v. Waggoner
319 S.W.2d 930 (Mis. 1959) 24

Stevens v. McHan
3F3d 1204 (8th Cir. 1993) 22

US v. Gaudin
132 L Ed 2d 444 (1995) 16

US v. Twin City Power Co.
350 US 222 (1955) 11, 15, 19

US v. Virginia E&P Co.
365 US 624 (Sup. Ct. 1961) 11, 15, 19, 20

Valdez v. City of New London
903 F.Supp. 286 (D.Conn. 1995) 22

Wilson v. Jones
902 F Supp 673 (E.D.Va 1995) 16

CITATIONS OF ORDERS AND OPINIONS

06-26-96 Judge Singleton (fed. distr. crt.) Order dismissing all issues.

07-19-96 Judge Singleton Order upholding dismissal on reconsid.

03-24-97 Appellate Court upheld dismissal.

05-05-97 Appellate Court denied rehearing and hearing en banc.

JURISDICTIONAL BASES FOR THIS COURT

1. The District Court dismissed all issues on June 26, 1996, and denied reconsideration on July 19, 1996.

2. The Ninth Circuit Court of Appeals upheld the dismissal on March 24, 1997, and denied rehearing on May 5, 1997.

3. This Court has jurisdiction to review the judgment by the Alaska Supreme Court and the Ninth Circuit Courts of Appeals under USC., 28 Sec. 1254, 1257.

CONSTITUTIONAL PROVS.- STATUTES - REGULATIONS

US Constitution

Article 3 Sec. 2

Article 4 Sec. 1, 2

Article 6.

Amdmt. 5, eminent domain.

Amdmt. 7, trial by jury.

Amdmt. 8, excessive fines.

Amdmt. 13, involuntary servitude.

Amdmt 14, due process of law.

Alaska Constitution Art. 1. Sec. 1.

Inherent rights.

A.C. Sec. 6, petition.

A.C. Sec. 7, due process.

A.C. Sec. 14, seizures.

A.C. Sec. 16, trial by jury.

A.C. Sec. 18, eminent domain.

AS 09.10.070

AS 09.25.010

AS 09.25.020 (1)(4)

AS 09.45.630

AS 09.55.310 (1)(2)

AS 09.55.320

AS 09.55.330

AS 09.55.370

AS 09.55.430 (3)

AS 09.55.460 (b)

AS 24.40.010

AS 34.40.090

AS 34.55.004 (1)(2)(3)

AS 34.55.046

AS34.60.040(1)(2)(3c,a)

AS 34.60.070

AS 34.60.090 (4)

AS 34.60.120 (3)(9)

AS 34.60.130. (a)(b)

AS 34.60.150

AS 44.88.38

USCS 23 Sec. 127 (b)

USC 28 Sec. 1331,

USC 28 Sec. 1343(a)

USC 28 Sec.1346(a2)(b)

USC 28 Sec. 1347

USC 28 Sec. 1355

USC 28 Sec. 1358

USC 28 Sec. 1367

USC 42 sec. 1983

USC 42 Sec. 1985 (2)

USC 42 Sec. 1986

49 CFR Sec. 24.101

49 CFR Sec. 24.102

49 CFR Sec. 24.103

49 CFR Sec. 24.103 (b)

49 CFR Sec. 24.304

49 CFR Sec. 24.306

Rule 72, (5)f, and (2)

Canon 2, 3.

STATEMENT OF THE CASE

FACTUAL STATEMENT.

Because of a third party's involvement, the parties stipulated to only determine the impaired value of the raw land in the first trial, and the issues of decreases attributed to the highway project and business damages were bifurcated to a second trial [A.14, *Bifurcation Agreement (court order)* A.29, *State appraiser lists bifurcated issues*]. The first trial was held, and the impaired value was established [A.16, *Bench ruling in 886 case*]. After having benefited from partially implementing the Bifurcation Agreement [A.14] by keeping valuable property rights from the first trial, the State of Alaska and its officers decided to breach and default on our agreement (bilateral contract) to hold a second trial on the issues of decreases and damages. The Alaska Supreme Court has ruled that it was then too late to appeal the first trial, where the issues normally would have been heard, thus allowingthe State to take several valuable vested property rights, which were protected by the federal Constitution, absent compensation and due process [A.31, *affidavit state appraiser*].

The Alaska Supreme Court took on the role of the jury, sua sponte, by establishing the facts of the case, but without the benefit of knowing the real facts. Other courts have now relied on those illusory facts. The High Court also took on the role of legislating by simply ignoring applicable state and federal condemnation laws. The High

Court ruled that we had our day in court in the first trial, and it simply ignored the Bifurcation Agreement on the second trial. The Court remanded the case back to the lower court to reestablish whether there had been an inverse taking, essentially based on the same business interference scenario that had previously been established by the lower court. The lower court (new judge) again found that there was an early taking, this time in 1984. However, compensation was limited to interest on the value of raw land **in 1986** when the property was severely impaired by the impact of the highway project, and no compensation for fixed improvements was considered [A.17, *State admission in 886 case*].

Even though both state and federal laws prohibit the state from benefiting from pre condemnation impairments, and even though the property had never been appraised at its highest and best use [A17, *Bench ruling 886 case*] and all the fixed improvements had been excluded from the first trial based on the Bifurcation Agreement, the state courts denied our several requests to litigate those issues in the current cases [A.17, *AK Supreme Crt denies motion to litigate the subject issues in the 2287 sister case*].

I was forced to initiate federal litigation, as the state courts refused access to litigate the bifurcated property rights [A.17]. In the process of conducting my research, I learned that I had to exhaust state remedies on all issues prior to federal litigation. The state courts had never ruled on the bifurcated issues; they simply ignored the Bifurcation

Agreement. Moreover, there were additional post trial taking issues[1] and civil rights violation issues[2] that had never been ruled on by any court. The federal issues had been formally preserved from previous litigation without objection from the state [A.30].

Ironically and erroneously, Judge Savell dismissed all taking issues on *res judicata,* and he dismissed the civil rights violations on immunity and time bar, even though these violations were performed by state officers under the color of state law and equitable estoppel should have applied, as we were continuously pursuing alternative remedies.

I initiated federal litigation. The state courts had refused access to litigate the bifurcated or post trial issues [A.17], and they abused process by permitting the State and its officers to fraudulently bifurcate valuable federal property rights from the first trial, apparently with the intention of breaching our contract when it was too late for me to raise the issues in the first trial. Judge Singleton dismissed all issues based on *res judicata* and the Eleventh Amendment. The Singleton court held that a federal court has no authority to review a state court even when it is wrong [A.3, A.6]. His ruling was upheld by the Ninth Circuit [A.9, A.13].

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1 *The State failed to build an access road, six years later, which it had committed to build in the taking documents, leaving lots land locked.*

2 *Besides the fraudulent Bifurcation Agreement, the State and its officers enforced an illegal department policy of taking expensive land for as little as possible, by fraudulent means, including ignoring and violating state and federal condemnation statutes, constitutional provisions and regulations [A.19-28].*

I contend is that a federal court does have the authority to review the process. This is different from reviewing a decision on its merit. If federal due process and civil rights laws shall have any meaning, the federal courts must review whether a litigant was accorded due process in the state courts.

The Ninth Circuit misread the facts. It listed all the sister cases as evidence that we had our day in court. The crucial fact is that the current issues were either preserved, bifurcated, or are post trial issues. Our statement that we "raised" all issues in the state courts did not mean that the issues were heard on their merits. The only way they were "raised" were in our motions for leave to litigate the issues in the sister cases. These motions were denied. The 870 Savell case was initiated to exhausted state remedies. In that case Judge Savell dismissed all issues on *res judicata*, immunity or time bar without even permitting discovery. Judge Savell had several conflicts of interest in that case, one conflict was that he was a likely witness, another was that the wife of the accused officer worked under Judge Savell. Dismissing formally preserved issues [A.30], bifurcated [A.14], and post trial issues on *res judicata* does not reach the federal standard for due process. The Savell Court simply ignored the Bifurcation Agreement. The fallacy in Judge Savell's dismissal is further illustrated by Judge Steinkruger's 9-28-96 order [A.18] from the 886 sister case where she held "Civil

rights, extortion claims must be litigated in a separate action."

Judge Steinkruger was the judge in the sister cases.

THE BASIS FOR FEDERAL JURISDICTION IN THE COURT OF FIRST INSTANCE

The Federal District Court has jurisdiction pursuant to 28 U.S.C. Sec. 1343. The Ninth Circuit has jurisdiction pursuant to 28 U.S.C. Sec. 1291.

ARGUMENT

Reasons for granting a Writ of Certiorari.

A United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter, has decided an important federal question in a way that conflicts with a decision by a state court of last resort, or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

STATEMENT

States must abide by the Fifth and the Fourteenth Amendments. Without federal recourse, the Amendments would have no meaning. The Fourteenth Amendment reads:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States wherein they reside. No State shall make or enforce any law which shall abridge the

> privileges or immunities of citizens of the United states; ***nor shall any State*** *deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

The Eleventh Amendment limits persons from one state from suing another state. Some courts, in their "legislative" capacity, also have decided to limit citizens from maintaining a suit against their own states. The Fourteenth Amendment, however, was instituted after the Eleventh Amendment in order to balance the limitations on individuals with justice and fairness in the form of limits on states. The intent is clear; one may not maintain a suit against a non consenting state as long as that state is providing reasonable due process. **This is a case where the State has failed to provide due process.** This is a case where there was no post taking process available. This is a case where the state has abused due process. This is a case where the state has agreed to litigate the federal issues in the federal court. This is a case where the Fourteenth Amendment would have no meaning if it were not enforced by a federal court. The federal provisions under the Fourteenth Amendment set a minimum standard, and as long as the State stays within that standard, no federal suit can be maintained against a state. However, a state is liable for failing to maintain that standard. Further, **the Eleventh Amendment immunity does not extend to officials in their personal capacity**. The Fourteenth Amendment was enacted to provide a civilized forum to settle disputes.

A **state is bound by the just compensation clause** of the Fifth Amendment. Pruneyard Shopping Center v. Robins 447 US 74 (1980)

Our reasoning in Lloyd, however, does not ex proprio vigore limit the authority of the State to exercise its police power or its sovereign right to adopt in its own Constitution individual liberties more expansive than those conferred by the Federal Constitution. Pruneyard Shopping Center v. Robins 447 US 74 (1980)

[t]he determination whether a state law unlawfully infringes a landowner's property in violation of the Taking Clause requires an examination of whether the restriction on private property "**forc[es] some people alone to bear public burdens** which, in all fairness and justice, should be borne by the public as a whole. This examination entails inquiry into such factors as the character of the government action, its **economic impact**, and its interference with reasonable investment-backed expectations. Pruneyard Shopping Center v. Robins 447 US 74 (1980)

The national government of the United States, while coexisting with the 50 states which make it up, is **supreme** over them to the extent of its authority under Article VI of the Federal Constitution. Parratt v. Taylor 451 US 524 (1981)

Insofar as 42 USCS Sec. 1983 affords a civil remedy for deprivations of federally protected rights by persons acting under color of state law without any express requirement of a particular state of mind, the initial inquiry in any Sec. 1983 action must focus on whether two essential elements to a Sec. 1983 action are present, that is, whether the conduct complained of was committed by a person acting under color of state law, and whether this conduct deprived the person of rights, privileges, or immunities secured by the Constitution or laws of the United States. Parratt v. Taylor 451 US 524 (1981)

Nothing in the Fourteenth Amendment protects against all deprivations of life, or property by the state, but only against depravations without due process of law; . . .Parratt v. Taylor 451 US 524 (1981)

> [On] motion for a new trial, the court shall give judgment after an examination of the entire record, without regard to technical errors, defects, or exemptions which do not affect the substantial rights of the parties, does not change the well-settled rule that an erroneous ruling which relates to the substantial rights of a party is ground for reversal unless it affirmatively appears from the whole record that it was not prejudicial. Carter v Carter Coal Co. 298 US 342 (1935)

> {e}stablished state procedure as lacking in due process and a property damage claim arising out of the misconduct of state officers, the state action not necessarily being complete in the latter situation. Parratt v. Taylor 451 US 524 (1981)

The Bifurcation Agreement

This case is not about dissatisfaction with previous compensation as the Ninth Circuit stated. This case is about state officers', under the color of state law, fraudulently entering into an agreement to bifurcate property rights to a second trial and then breaching that agreement when it was too late to appeal the first of the two bifurcated trials. It is about the State of Alaska's taking $350,000 worth of fixed improvements **without providing any process or compensation.** The state proceedings did not afford an adequate opportunity to raise the federal claims. Defeo v. Sill 810 F.Supp. 648 (E.D. Pa. 1993).

> "Federal courts may decline to abstain upon a showing of "bad faith, harassment, or some other extraordinary circumstance that would make abstention inappropriate." Middlesex County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S.435

All these factors exist in our case, and in addition, the state did not adhere to basic condemnation law. "Just Compensation" was based on a value **two years after the property was actually taken**, when it was severely impaired from the highway project, and did not include consideration for the fixed improvements.

> It is settled that the "just compensation" required by the Fifth Amendment to be paid for the taking of private property for public use is **the value at the very time of the taking** to the person from whom taken. United States v. Virginia E. & P. Co. 365 US 624 (1961), First Lutheran Church v Los Angeles County 482 US 304 (1987), Kirby Forest Industries, Inc. v United States, 467 US 1 (1984)
>
> The United States no more than a state, can be excused from paying just compensation measured by **the value of the property at the time of the taking** merely because it could destroy that value by appropriate legislation or regulation. United States v. Twin City Power Co. 350 US 222 (1955)

The State ended up taking $2 million worth of fixed improvements and other post trial property rights absent any hearing on the merits of our claims.

> The fundamental requirement of due process is the opportunity to be heard and this opportunity must be granted at a meaningful time and in a meaningful manner, some kind of hearing is required at some time before a state may finally deprive a person of his property interests, and merely because a state may be excluded from providing a meaningful hearing before deprivation of property because it is not impracticable, but impossible, to do so does not mean that the state can take property without providing a meaningful **post-deprivation hearing**. Parratt v. Taylor 451 US 524 (1981)

> "Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." At the outset, then, we are faced with what has become a familiar **two-part inquiry**: we must determine whether Logan was deprived of a protected interest, and, if so, what process was his due. Logan v. Zimmerman Brush Co 455 US 422 (1982)

Res judicata/Due Process

The state courts should not have dismissed our claims without a hearing on the merits of the claims. I can accept any decision that comes from a jury, but find being denied access to the courts extremely frustrating. There is no way that issues that were not even known during previous litigation could be subject to *res judicata*. I also find it frustrating that our state is practicing land fraud and is getting away with it.

> [w]here a plaintiff's claim had been dismissed for failure to comply with a trial court's order -- the Court read the "property" component of the Fifth Amendment's Due Process Clause to impose "constitutional **limitations upon the power of courts**, even in aid of their own valid processes, to dismiss an action without affording a party the opportunity for a hearing on the merits of his cause." Parratt v. Taylor 451 US 524 (1981)
>
> Similarly, the Fourteenth Amendment's Due Process Clause has been interpreted as preventing the States from denying potential litigants use of established **adjudicatory procedures**, when such [455 US 430] an action would be "the equaling of denying them an opportunity to be heard upon their claimed right[s] 401 US 371 Logan v. Zimmerman Brush Co 455 US 422 (1982)

> Each of our due process cases has recognized, either explicitly or implicitly, that because **"minimum [procedural] requirements [are] a matter of federal law**, they are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action." Logan v. Zimmerman Brush Co 455 US 422 (1982)

> [D]ue process clause grants the aggrieved party **the opportunity to present his case and have its merits fairly judged**. Logan v. Zimmerman Brush Co 455 US 422 (1982)

If the State is permitted to ignore laws and take what it wants without paying for it, how can people be expected to have respect for the laws.

> [t]he state may not finally **destroy a property interest** without first giving the putative owner an opportunity to present his claim of entitlement. Logan v. Zimmerman Brush Co 455 US 422 (1982)

> "[a]bsent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a **meaningful opportunity** to be heard. 401 US 377. Logan v. Zimmerman Brush Co 455 US 422 (1982)

Guarding the federal highway trust fund is not good enough reason for the state not to pay for what it takes. Clearly the federal courts cannot deny access to due process when the state is refusing or abusing process and is ignoring and misreading federal law.

> [w]e agree that a due process **right of access to the courts** exists when fundamental interests are present and the State has exclusive control over "the adjustment of [the] legal relationship[s] involved. Logan v. Zimmerman Brush Co 455 US 422 (1982)

> [i]ts guarantee "to all individuals [of] a **meaningful opportunity** to be heard. 401 US 379 Logan v. Zimmerman Brush Co 455 US 422 (1982)

> [t]he State may not deprive someone of that access unless the balance of state and private interests favors the government scheme. Logan v. Zimmerman Brush Co 455 US 422 (1982)
> The hearing required by the due process clause of the Fourteenth Amendment must be meaningful and appropriate. ... [p]rocedures adequate to determine a welfare claim may not suffice to try a felony charge. [w]e look to substance, not to bare form, to determine whether constitutional minimums have been honored." Bell v Burson 402 US 535 (1971)

The State and its officers should not have fraudulently stipulated to bifurcate valuable property rights to a second trial and then breached that partially implemented agreement when it was too late to appeal the first trial.

> It is a proposition which hardly seems to need explication that **a hearing which excludes consideration of an element essential to the decision . . . does not meet this standard.** Bell v Burson 402 US 535 (1971)
>
> The Fifth Amendment's just compensation provision is designed to bar government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole. First Lutheran Church v Los Angeles County 482 US 304 (1987)
>
> [m]any of the provisions of the Constitution are designed to limit the flexibility and freedom of government authorities, and the Just Compensation Clause of the Fifth Amendment is one of them. First Lutheran Church v Los Angeles County 482 US 304 (1987)

The Fifth Amendment provides for due process and just compensation. The standards set by this Court have been ignored by the state courts, and the federal courts have dismissed all issues based

on the erroneous state rulings. Taking property rights absent a hearing on the issues and not paying for fixed improvements does not reach the federal standard. The State can adopt its own Constitution and statutes, but they may not fall below the federal standards. ***First Lutheran Church v. Los Angeles County*** 482 US 304 (1987), ***United States v. Virginia E.&P. Co.*** 365 US 624 (1961), ***Kirby Forest Industries, Inc. v. United States*** 467 US 1 (1984), ***United States v Twin City Power Co.*** 350 US 222 (1955), ***Parratt v. Taylor*** 451 US 524 (1981), ***Ruckelshous v. Monsanto Co.*** 467 US 986 (1984). No court has ruled on whether the Eleventh Amendment gives a state the right to abuse federally protected property rights. The catch 22 situation that exists in this case, where one must first raise the claims in the state courts, and the federal courts' refusing access to federal litigation based on *res judicata* and the Eleventh Amendment, regardless of what process was provided in the state courts clearly violates our federal Constitution.

The Seventh Amendment provides for a jury's deciding factual issues. The Alaska Supreme Court did not have the right to deny a jury trial on factual issues. The High Court had no authority to act as a jury and make factual findings that have all shown to be erroneous once the record was established. We are still handicapped by all other courts' having adopted the erroneous facts. ***Burlington Northern v Nebraska Public Power Dist.*** 931 F Supp 1470 (D.Neb. 1996), ***United***

States v Gaudin 132 L Ed 2d 444 (1995). For opposing view, ***Wilson v. Jones*** 902 F Supp 673 (E.D.Va 1995).

The Eighth Amendment provides for no excessive fines or cruel and unusual punishment. Taking vested property rights absent just compensation, destroying our business, singling out our family to pay a disproportionate share ($2 million) of a public project, and taking our property for less than our cost -- less than we owed the bank -- making us subject to a judicial foreclosure, all because we did not appeal the 886 case, even though the relevant issues had been preserved in a Bifurcation Order for litigation in a future trial, is an excessive fine and cruel and unusual punishment. The federal issues were also formally preserved [A.30] for federal litigation in the previously litigated cases [4FA-86-2287, 886], without State objection. (no rulings on the issue)

The Eleventh Amendment. The Fourteenth Amendment, was adopted after the Eleventh Amendment and was specifically intended to provide a balance of rights for individuals against the Eleventh Amendment. The federal court should have reviewed whether at least minimum federal due process standards were adhered to before dismissing all issues. It should also inquire into whether federal law was properly applied.

The Thirteenth Amendment provides for no involuntary servitude. We have never intentionally waived our rights to just

compensation. Being singled out to pay a disproportionate share of a public project violates this Amendment. (No rulings on the issue)

The Fourteenth Amendment provides for due process of law when taking private property and for equal protection of the laws. The Fourteenth Amendment makes it clear that the State must provide due process in conjunction with taking private property. It also makes it clear that it is a federal mandate not subject to sovereign immunity, or the Fourteenth Amendment would have no meaning. The Alaska Supreme Court's taking on the role of fact finder and denying a hearing on the post trial and bifurcated issues [A.29], violated this Amendment. Singling out our family to pay more than our fair share of the highway project violates this Amendment. ***Parratt v. Taylor*** 451 US 524 (1981), ***Logan v. Zimmerman Brush Co*** 455 US 422 (1982), ***Bell v. Burson*** 402 US 535 (1971), ***Roberts v. New York*** 295 US 264 (1934), ***Board of Regents v. Roth*** 408 US 564 (1972).

> The constitutional requirement of an opportunity for some form of hearing before deprivation of an interest encompassed by the Fourteenth Amendment's protection of liberty and property **does not depend upon any narrow balancing process.** Roberts v New York 295 US 264 (1934)
>
> Yet, while the Court has eschewed rigid or formalistic limitations on the protection of procedural due process, it has at the same time observed certain boundaries. **For the words "liberty" and "property" in the Due Process Clause of the Fourteenth Amendment must be given some meaning.** Board of Regents v Roth 408 US 564 (1972)

> [S]tipulated dismissal of judgment will generally not support claim of issue preclusion, because issues would not have been actually litigated and decided. Pedring v Chun 906 F.Supp. 1377 (D.Hawaii 1995)
>
> {e}stablished state procedure as lacking in due process and a property damage claim arising out of the misconduct of state officers, the state action not necessarily being complete in the latter situation. Parratt v. Taylor 451 US 524 (1981)

The State's and its officers' ignoring laws

The Alaska Supreme Court must adhere to state and federal laws. In our case all condemnation laws were ignored [A.19-28]:

1. *The highest and best use*. The Alaska Supreme Court's denial of compensation based on the highest and best use for which the property was suitable on the date of taking, contradicts the law of the land. Judge Blair and Judge Steinkruger both found the highest and best use to be as subdivided lots [A.17]. Yet, we were only compensated for a single tract of unimproved raw land [A.17]. ***Carl R. Lange v. State of Washington*** 547 P2d 282 (Wash. 1976).

2. *Development profit*. The Steinkruger Court denied "development profit" based on the erroneous belief that it was not available in Alaska. The only issue should be the fair market value on the date of taking. If our business created that value or if it derived from some other factor should be irrelevant. The State should not have deducted for an imaginary developer and for items completed and paid in full.

State v. Terrace Land Co. Inc. 298 So2d 859 (Loui. 1974), ***US v. Virginia E & P. Co.*** 365 US 624 (1961).

3. *Fair market value on date of taking.* The Alaska Supreme Court's denial of compensation for the fair market value on the date the property was actually taken, before it became impaired by the pendency of the highway project, violates AS 34.60.120(3) and 49 CFR Sec. 24.103(b). It ignores those issues' having been preserved for future litigation in a partially implemented Bifurcation Agreement [A.14]. This is contrary to the law of the land. Further, the Alaska Supreme Court adopted the *Lange* taking scenario from the Washington Court, but it ignored the most important aspect, that of moving back the date of value to a time before the property became impaired by the highway project. This concept is echoed by a multitude of Courts. ***Carl R. Lange v. State of Wash.*** 547 P2d 282 (Wash 1976), ***First Lutheran Church v. Los Angeles County*** 482 US 304 (1987), ***United States v. Twin City Power Co.*** 350 US 222 (1955).

> Just compensation, as required by the Fifth Amendment, means the value of what is taken at the very time it is taken and to the person from whom taken. ***Kirby Forest Industries, Inc. v. United States***, 467 US 1 (1984).

4. *Neither AS 34.60.120 (3) [p.217] or 49 CFR Sec. 24.103 (b)[p.220] are written clearly.*

> Accordingly, the impact of that event upon the likelihood of actual exercise of the easement cannot be considered. As one writer has pointed out, "[i]t would

> be manifestly unjust to permit a public authority to depreciate property values by a threat ... [of the construction of a government project] and then to take advantage of this depression in the price which it must pay for the property" when eventually condemned. ***United States v Virginia E. & P. Co.*** 365 US 624 (1961).

The framers intended for decreases to be excluded, not disregarded, as held by the Alaska Supreme Court.

5. *Damages* The Alaska Supreme Court erred in denying compensation for damages to our business that was located on the premises and to our investment backed housing project. The addition of the word "damaged" to our Constitution [p.212] made compensation for damages a federal vested property right. Nor should our business or our investment backed project have been taken absent just compensation. The stipulated agreement estops the State from now opposing damages and decreases. ***F.Giannini v. First National Bank of De Plains*** 483 NE 2d 924 (Ill. App. 1985).

> Pretrial stipulation has the effect of amending the complaint. ***Lake Havasu Com. Hosp v. Ariz Title Ins*** 687 P2d 371 (Ariz App 1984).
>
> Stipulation does not evaporate with new counsel. Stipulation will stand; when one reaped the benefits one cannot deny stipulation. ***Marden v. Intern. Ass'n of Machinist ETC.*** 576 F2d 576 (1978).
>
> [O]ral contract with respect to interest in land may become enforceable, in spite of statute of frauds, where there has been part performance. ***Pedring v. Chun*** 906 F.Supp. 1377 (D.Hawaii 1995).
>
> The "just compensation" provision in the Fifth Amendment is designed to bar government from forcing some people alone to bear a public burdens

> which, in all fairness and justice, should be borne by the public as a whole. ***First Lutheran Church v. Los Angeles County*** 482 US 304 (1987).

The Alaska Supreme Court's taking on the roll of fact finder

The Alaska Supreme Court's taking on the role of fact finder prevented our having an opportunity to explain evidence and develop a full factual record. The limited format of an appeal does not provide that process.

Right to jury

We have the right to have a jury decide whether property rights were taken absent just compensation and whether the State and its officers violated our civil rights and whether there were business damages or decreases caused by the highway project. ***Parratt v. Taylor*** 451 US 524 (1981). The Due Process Clause guarantee "to all individuals [of] a meaningful opportunity to be heard. 401 US 379 ***Logan v. Zimmerman Brush Co*** 455 US 422 (1982), ***JB v. Washington County*** 905 F Supp 907 (D.Utah 1995), ***Sheerbonnet, Ltd. v. American Express Bank LTD*** 905 F Supp 127 (S.D.N.Y. 1995).

> The hearing required by the due process clause of the Fourteenth Amendment must be meaningful and appropriate. . . . It is a proposition which hardly seems to need explication that a hearing which excludes consideration of an element essential to the decision . . . does not meet this standard. ***Bell v. Burson*** 402 US 535 (1971).
>
> The constitutional requirement (of a hearing before deprivation of a property right) does not depend upon any narrow balancing process. ***Roberts v. New York***

295 US 264 (1934), ***Board of Regents v. Roth*** 408 US 564 (1972).

Civil Rights Violations

Permitting the State's entering into a Bifurcation Agreement to remove vested property rights from the first trial for future litigation and then to breach this bilateral contract after partial implementation is contrary to the law of the land. The State's and its officers' habitually misrepresenting to the courts what property rights were taken, enforcing an illegal department policy to take property for as little as possible, regardless of applicable laws, also violates federal law. ***Ketron v. Chattanooga - Hamilton County Hosp.*** 919 F Supp 280 (E.D.Tenn. 1996), ***Hafer v. Melo*** 502 US 21 (1991), ***Stevens v. McHan*** 3 F3d 1204 (8th Cir. 1993), ***Valdez v City of New London*** 903 F Supp 286 (D.Conn. 1995), ***Pruneyard Shopping Center v. Robins*** 447 US 74 (1980), ***Roberts v. City of Forest Acres*** 902 F Supp 662 (D.S.C. 1995), ***Sanfilippo v. County of Santa Cruz*** 415 F.Supp 1340 (N.D.Cal. 1976).

> . . . whether breach affects interest sufficiently grave to trigger due process scrutiny; court must look to effect of breach on claimant and determine whether effect is so dramatic and rights implicated so fundamental that Constitution provides remedy. ***Irwin v. City of New York*** 902 F Supp 442 (S.D.N.Y. 1995).
>
> Taking – Result. It does not matter how it was done, technical label, it is the result that matters. ***Hughes v. Washington*** 389 US 290, 298 (1967)
>
> Insofar as 42 USCS Sec. 1983 affords a civil remedy for deprivations of federally protected rights by persons acting under color of state law without any express requirement of a particular state of mind, the initial

> inquiry in any Sec. 1983 action must focus on whether two essential elements to a Sec. 1983 action are present, that is, whether the conduct complained of was committed by a person acting under color of state law, and whether this conduct deprived the person of rights, privileges, or immunities secured by the Constitution or laws of the United States. ***Parratt v. Taylor*** 451 US 524 (1981).

The Alaska Supreme Court's denial of compensation for the $350,000 worth of fixed improvements that our business (Unique Builders) had completed in the take area and the enhanced value attributed to those improvements, as well as from the property's having been subdivided city lots, is unprecedented, contrary to the law and to every other state or circuit court's ruling. Moreover, it is contrary to the rulings of this Court. Further, the State's failure to build the frontage road to which it committed in the taking documents, leaving some lots landlocked after the taking, was an additional compensable taking of property rights. ***State v. Glen*** 602, P2d 253 (Or. 1979), ***State v. Lewis*** 785 P2d 24 (AK 1990).

While there is no set formula for determining when justice and fairness require that economic injuries caused by a public action must be deemed a compensable taking, and the inquiry into whether a taking has occurred is essentially an ad hoc, factual inquiry, several factors should be taken into account when determining whether a governmental action has gone beyond regulation and effects a taking, among which are the character of the governmental action, its economic impact, and its

interference with reasonable investment-backed expectations. ***Ruckelshaus v. Monsanto Co.*** 467 US 986 (1984), ***Howard v. Grinage*** 82 F3d 1343 (6th Cir. 1996), ***State v. Waggoner*** 319 S.W.2d 930 (Mis. 1959), ***City of Los Angeles v. Decker*** 558 P2d 545 (Cal. 1977).

Constitutional Violations

Singling out our family to subsidize this highway project with our working capital and savings by paying less than our cost for the property and less than what we owed to the bank, making our family subject to a judicial foreclosure, making us substantially poorer, violated the Alaska Constitution that provides for damage compensation. A Constitutional violation is self-executing. [W]here a plaintiff's claim had been dismissed for failure to comply with a trial court's order -- the Court read the "property" component of the Fifth Amendment's Due Process Clause to impose "constitutional limitations upon the power of courts, even in aid of their own valid processes, to dismiss an action without affording a party the opportunity for a hearing on the merits of his cause." ***Parratt v. Taylor*** 451 US 524 (1981), ***Carter v. Carter Coal Co.*** 298 US 342 (1935), ***First Ev. Chur. Glendale v. LA*** 482 US 304 (1987), ***Defeo v. Sill*** 810 F Supp 648 (ED. PA. 1993), ***Irwin v. City of New York*** 922 F Supp 442 (S.D.N.Y. 1955).

DATED this 15th day of May, 1997 at Fairbanks, Alaska.

By: Lars W Ehrlander

Lars W. Ehrlander, *pro se*

APPENDICES

DIRECTORY OF APPENDICES

Opinions, Orders, Findings of Facts and Conclusion of Law:

6-26-96 Case F-021 - Judge Singleton - ORDER
Dismissing all federal issues A.3
7-15-96 Case F-021 - Judge Singleton - ORDER
After motion for rehearing A.6
3-24-97 Ninth Circuit upheld dismissal A.9
5-05-97 Ninth Circuit denied rehearing A.13

Opinions, Orders, Findings of Fact and Conclusion of Law in Companion Cases:

11-20-87 Case 886 & 2287 - Judge Blair - ORDER
The Bifurcation Order A.14

12-10-87 Case 886 - Judge B. .r - BENCH RULINGS AT TRIAL A.15
Court: Find 1986 value A.16
Do not talk about '83 - '86 damages in first trial A.16
If based on '83 subdivided value - no second trial, except on carrying charges, impaired value A.17
State's appraisal assumes taking unimproved property A.17
Highest and best use is as subdivided A.17
4-30-96 Case 2287, 870 - **ALASKA SUPREME COURT** ORDER DENYING MOTIONS:
1. To amend points on appeal
2. To merge 2287 & 870 and to stay
3. To waive final judgment in the 886 case
4. To enforce AS 34.60.120 (3)
5. For judgment on *Klopping* damages
6. For compensation for improvements
7. For highest and best use
8. To enforce the Bifurcation Agreement A.17
9-28-96 Judge Steinkruger case 886 - Litigate civil rights claims in independent action A.18

CONSTITUTIONAL PROVISIONS
Alaska Constitution A.19
U.S. Constitution A.19
State statutes A.20
Federal statutes A.24
Federal regulations A.26
Rules A.28

EVIDENCE OF BIFURCATED ISSUES
State's amended appraisal instructions A.29

Reserving federal issues A.30
Bifurcation Agreement ..... (A. 14)
EVIDENCE OF THE PROPERTY BEING IMPAIRED
Affidavit Glen Potts, State in-house appraiser A.31
Potts' 1984 valuation estimate A.33
EVIDENCE OF THE PROPERTY'S BEING IMPROVED
Letter from City of Fairbanks regarding improvements A.34

OPINIONS, ORDERS, FINDINGS OF FACTS AND CONCLUSIONS OF LAW

MINUTES OF THE UNITED STATES DISTRICT COURT

DISTRICT OF ALASKA

Lars Ehrlander v. State of Alaska

Case No. F96-0021 CV (JKS)

By: THE HONORABLE JAMES K. SINGLETON

Deputy Clerk: Patty Demeter, Case Management: 271-3235*

PROCEEDINGS: ORDER FROM CHAMBERS

Lars Ehrlander ("Ehrlander") sues the State of Alaska ("State") and various of its agents and officers asserting claims under 42 U.S.C. Sec. 1983. This court has jurisdiction. 28 U.S.C. § 1343.[1]

Defendants move to dismiss, asserting various grounds. Docket Nos. 15, 23. The motion is opposed and Ehrlander requests oral argument. Docket Nos. 22, 30. After reviewing the record, the Court concludes that oral argument will not be helpful. D. Ak. LR .1(i). All of Ehrlander's claims against the State must be dismissed on the basis of Eleventh Amendment immunity. We must then turn to Ehrlander's claims against certain state agents in their personal capacity. The

gravamen of Ehrlander's claim is that the State condemned his property and did not pay him what it was worth. The State correctly points out that all of the issues in this case have been litigated in state court and judgments entered. See *Ehrlander v. State of Alaska*, 797 P.2d 629 (Alaska 1990); 4FA-95-870 Civil; 4FA-86-2287 Civil; and 4FA-86-886 Civil. Those judgments are binding on both parties under the doctrines of *res judicata* and collateral estoppel. *See, e. g.* , *Eilrich v Remas*, 839 F.2d 630 (9th Cir. 1988) (if issues have been litigated in state court or before state administrative agency and state would give them preclusive effect, the federal court must give state determinations preclusive effect). The State concludes that Ehrlander is bound by the various actions in which he has litigated these issues. Diedrich v. City of Ketchikan, 805 P.2d 362, 369-70 (Alska 1991). It is important to mention that the state court decisions are binding on the parties, whether they are correct or not. If Ehrlander received ineffective assistance of counsel, *i.e:* , was the victim of malpractice, his remedy is an action for malpractice in state court. Absent diversity of citizenship, Ehrlander cannot sue his attorney in federal court.[2]

---

[1] The State correctly points out that the First Amendment bars any action at law or in equity against the State, its agencies, and its officers in their official capacity. The State is not a "person" for purposes of Sec. 1983. Thus all of these claims must be dismissed.

[2] Ehrlander essentially makes four claims. First, he was not paid what his property was worth. The value of the property and the circumstances surrounding the acquisition were thoroughly litigated in state court and the judgments in those cases are res judicata, which means that, as to such issues, Ehrlander cannot litigate any issue that could have been raised and considered. Res judicata is not limited to that were actually raised. Second, Ehrlander argues a number of tort claims which cannot be brought in federal court absent diversity of citizenship. Third, Ehrlander asks, in effect, for this Court to

IT IS THEREFORE ORDERED:

The motion for summary judgment at Docket No.15 is GRANTED. The Clerk of Court is directed to enter judgment in favor of the State and its officers and against Ehrlander dismissing his action with prejudice. Each party shall bear its own costs. The motion to reject service at Docket No. 13 is DENIED as MOOT since this entire case is dismissed. The motion to set the record straight at Docket No. 25 is moot and is therefore DENIED. The motion for judgment on liability at Docket No. 22 is moot and is therefore DENIED. [3] The request for oral argument at Docket No. 30 is DENIED. The motion to inform the court of new important discovery at Docket No. 31 is DENIED.

Entered at the direction of the Honorable James K. Singleton, United States District Court Judge.

DATE: June 26, 1996

review decisions of the state court and particularly Judge Savell's failure to recuse. Docket No: 31. This Court has no jurisdiction to review decisions of state courts applying state law. Finally, Ehrlander claims he was denied due process the state and its agents fooled the state court. Claims of this kind must be litigated in the court allegedly fooled. Ehrlander's claims of fraud on the courts are simply arguments that the courts made the wrong decisions in his cases. Such claims cannot be litigated in federal court.

[3] The decision in this case is without prejudice to Ehrlander's pending litigation in state court.

MINUTES OF THE UNITED STATES DISTRICT COURT

DISTRICT OF ALASKA

Lars Ehrlander v. State of Alaska

Case No. F96-0021 CV (JKS)

By: THE HONORABLE JAMES K. SINGLETON

Deputy Clerk: Patty Demeter, Case Management: 271-3235*

PROCEEDINGS: **ORDER FROM CHAMBERS**

On July 15, 1996, this Court issued an order denying Lars Ehrlander's motion for reconsideration. Docket No. 36. The Court now sets out an explanation regarding denial of the motion for reconsideration.

Ehrlander sought reconsideration of this Court's order dismissing this action with prejudice to further action in federal court pending final decisions in the state court and with prejudice to further proceedings in any court regarding issues that were litigated or could have been

litigated in prior state proceedings. Docket No. 35. Ehrlander raised no new issues. Takings claims are not ripe until they have been presented to the state courts. *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985); *Jones Intercable of San Diego v. City of Chula Vista*, 80 F.3d 320, 323-24 (9th Cir.1996). Any claims that were submitted to the state court or could have been submitted to the state court are barred under the doctrine of *res judicata*. *Palomar Mobilehome Park Ass'n v. City of San Marcos*, 989 F.2d 362 (9th Cir.1993). This Court was of the view that all of Ehrlander's claims had either been presented to the state courts and rejected on their merits or should have been submitted and were therefore-within the doctrine of res judicata.

Alternatively, the claims are not ripe. Ehrlander has hardly shown that the Alaska court's treatment of inverse condemnation claims renders resort to state courts futile. See, e.g., *Suitum v. Tahoe Regional Planning Agency*, 80 F.3d 359 (9th Cir. 1996). Further, to the extent that Ehrlander is making claims against the State or its officers in their official capacity his claims are barred by the Eleventh Amendment. Such claims could be pursued in the state court. Finally, Ehrlander argues that he has claims against certain state officials in their personal capacity that do not relate to the taking of his property in inverse condemnation but relate to unfair manipulation of the state judicial proceedings. Such claims are also not ripe until they have been

presented to the state courts and the state judgments have been set aside. See, e.g., *Heck v. Humphrey*, 114 S. Ct. 2364 (I994}. While Heck deals with claims alleging actions whose unlawfulness would render a conviction or sentence invalid, there is no reason not to apply its rationale to claims alleging actions whose unlawfulness would render a state civil judgment invalid. The Alaska Supreme Court is prepared to set aside a judgment which resulted from a fraud on the court. See, e. g. , *Higgins v. Municipality of Anchorage*, 810 P.2d 149 (Alaska 1991); *Allen v. Bussell*, 558 P.2d 496 (Alaska 1976).'

In reviewing the order at Docket No. 32, it became clear that a typographical error occurred in n. 1 where the reference to the First Amendment clearly should have been a reference to the Eleventh Amendment. The First Amendment has absolutely nothing to do with this case.

IT IS THEREFORE ORDERED:

Footnote 1 in Docket No. 32 is amended to replace the reference to the First Amendment with a reference to the Eleventh Amendment. In all other respects, the motion for reconsideration at Docket No. 35 is DENIED.

Entered at the direction of the Honorable James K. Singleton, United States District Court Judge.

DATE: July 19, 1996

[1] Ehrlander reties on *Dodd v. Hood River County*, 59 F.3d 852 (9th Cir.1995). In *Dodd* the parties specifically reserved certain issues to be decided in a federal court proceeding that was pending at the same time. Here, while there may have been a bifurcation of issues as Ehrlander contends, they were separated for later consideration in the state court, not the federal court, and as Ehrlander concedes, subsequent judgments were entered. In fact, the final judgment found that all of Englander's claims were barred by res judicata. That decision is in itself res judicata in this Court even if erroneous, as Ehrlander contends, because this Court must give the same preclusive effect to state court judgments that the state court would, see 28 U.S.C. § 1738, and the state courts give preclusive effect to decisions, even if erroneous, including decisions resolving constitutional claims. See, also, 28 U S. C. § 1738; *DeNardo v. Johnstone*, 772 F. Supp. 462 (D. Alaska 1991).

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Filed Mar. 27, 1997

LARS W. EHRLANDER,
Plaintiff-Appellant,

No. 96-35915
D.C. No. CV-96-00021-JKS

v.

STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION; JOHN ATHENS; RAYMOND FUNK; JOHN MILLER; DONALD BAUM; FEDERAL HIGHWAY ADMINISTRATION,
Defendants-Appellees .

MEMORANDUM*
Appeal from the United States District Court
for the District of Alaska
James K. Singleton, District Judge, Presiding

Submitted March 24, 1997**

Before: SNEED, FARRIS, and THOMAS, Circuit Judges.

Lars Ehrlander appeals pro se the district court's grant of summary judgment in favor of the defendants in his 42 U.S.C. 1983 action alleging that the State of Alaska, the Alaska Department of Transportation, two Department of Transportation employees, and two Alaska assistant attorneys general participated (foot notes)

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a); 9th Cir. R. 34-4.

(end of foot note) in a scheme to take his property without just compensation. We have jurisdiction pursuant to 28 U.S.C. § 1291, and affirm.

Ehrlander contends the district court erred by concluding that his claims were barred by res judicata. We review the district court's application of res judicata de novo. See Hiser v. Franklin, 94 F.3d 1287, 1290 (9th Cir. 1996), cert. denied, 65 U.S.L.W. 3596 (U.S. Mar. 3, 1997) (No. 96-895). Federal courts must give a state court judgment the same preclusive effect that the judgment would have in state court. See Palomar Mobilehome Park Ass'n v. City of San Marcos, 989 F.2d 362,

364 (9th Cir., 1993); aee also Sansez v. City of Santa Ana, 936 F:2d 1027, 1035 (9th Cir. 1990) (federal courts look to law of the state for applicability of res judicata principles). In Alaska, res judicata holds that a final judgment will bar any subsequent suit between the same parties or their privies where the matter raised in the subsequent suit was or could have been decided in the first suit. See Summerville v: Denali Cntr , 811 P.2d 1047, 1050 (Alaska l991).

Here, Ehrlander claims that he has not been fairly compensated for the taking of his property, and that various state employees participated in a conspiracy to deprive him of his property for as little as possible. However, these issues either have been or could have been litigated in prior state court proceedings. See State v. Ehrlander, No. 0825 (Alaska July 31, 1996) (condemnation and inverse condemnation); Ehrlander v. Alaska, 797 P.2d 629 (Alaska 1990) (inverse condemnation); State v. Ehrlander, No. 4FA-86-2287 (Alaska Super. Ct. March 21, 1988) (condemnation); Ehrlander v. State, No. 4FA-86-2287 (Alaska Super. Ct. Feb. 3, 1993) (inverse condemnation); Ehrlander v. State, No. 4FA-95-0807 (Alaska Super. Ct. March 4, 1996) (state tort and civil rights action). Ehrlander is therefore barred by the doctrine of res judicata from relitigating these claims in federal court . See Palomar Mobilehome Park Ass'n, 989 F. 2d at 365; see also Sanchez, 936 F.2d at 1035 (stating that where a federal constitutional claim is based on the

same asserted wrongs as a state action, res judicata will bar the federal constitutional claim whether or not it was asserted in state court). 1/

Ehrlander concedes that "[a]ll issues in this case have been raised in the state courts." However, he argues that none has been "fully litigated." He apparently believes that because he did not receive all of the damages he sought in state court, his issues were not fully litigated. This argument fails. Ehrlander has exhaustively litigated his claim that he did not receive adequate compensation for the taking of his property in state court. While Ehrlander is dissatisfied with the outcome of the prior litigation, and believes that the Alaska superior court and supreme court erred because he did not receive the full measure of damages he sought, we do not have jurisdiction to review state (foot note)

Although assistant attorney general Raymond Funk and the two Alaska Department of Transportation employees were not parties to the state court proceedings, we conclude that they are privies of the parties to the state court proceedings. See Fund for Animals, Inc. v. Lujan, 962 F.2d 139i, 1398 (9th Cir. l992); Tolstrup v. Miller, 726 P.2d 1304, 1307 (Alaska 1986). (end of foot note)

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court rulings. See MacKay v. Pfeil, 827 F.2d 540, 543 (9th Cir.1987) (per curiam).

Ehrlander also contends that the district court erred by applying res judicata because, in the condemnation and inverse condemnation proceedings, he reserved the right to proceed in federal court on his federal claims. See Dodd v. Hood River County, 59 F.3d 852, 861-62

(9th Cir. 1995). This argument fails. In his action against the State of Alaska and assistant attorney general John Athens, see Ehrlander v. State, No. 4FA-95-0807 (Alaska Super. Ct. March 4, 1996), Ehrlander expressly raised his federal claims and those claims were decided against him on summary judgment. 2/

AFFIRMED.

(FOOT NOTE) Although Ehrlander also filed a reservation of federal claims in his action against the State of Alaska and assistant attorney general Athens, the reservation was filed after the Alaska superior court granted the defendants' motion for summary judgment.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Filed May 5, 1997

LARS W. EHRLANDER, Plaintiff-Appellant, v. STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION; JOHN ATHENS; RAYMOND FUNK; JOHN MILLER; DONALD BAUM; FEDERAL HIGHWAY ADMINISTRATION, Defendants-Appellees .

No. 96-35915
D.C. No. CV-96-00021-JKS

Before: SNEED, FARRIS, and THOMAS, Circuit Judges.

The panel has voted to deny appellant's petition for rehearing. Judge Thomas votes to reject the suggestion for rehearing en banc and Judges Sneed and Farris so recommend.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. See Fed. R. App. P. 35.

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

OPINIONS, ORDERS, FINDINGS OF FACT AND CONCLUSIONS OF LAW IN COMPANION CASES

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

Lars Ehrlander, plaintiff,
vs.
Fairbanks North Star Borough and State of Alaska, Department of Transportation and Public Facilities, defendants.
Case No: 4FA-86-2287 Civil
and
State of Alaska, plaintiff,
vs.
6.313 acres, more or less, Lars W. Ehrlander, et al, defendants.
Case No. 4FA-86-886
Project No. RS-RRS-M-OOOS(52)
Parcel No. 2OA

Date of Order: November 20, 1987

ORDER

The Court, being fully advised in the premises, and upon stipulation of the parties,

IT IS HEREBY ADJUDGED, ORDERED, AND DECREED that the above-captioned case shall be bifurcated, with the condemnation case, pertaining to the summons and complaint filed on

April 29, 1986, being tried during the week of December 7, 1987, and under the appropriate provisions of the existing pretrial order.

IT IS FURTHER ADJUDGED, ORDERED AND DECREED that the inverse condemnation taking case, with respect to the complaint filed by Lars Ehrlander, shall be reassigned for a trial date subsequent to the condemnation case, and that the issues to be determined in that case shall be the damages and compensation due Ehrlander for that period of time from August 24, 1983 until April 29, 1986, and that the parties shall apply to the court for a new trial date with respect to that inverse condemnation case.

Date: Nov. 20, 1987 Signed, James R. Blair, Superior Court Judge.

Case No. 4FA-86-2287 & 4FA-86-886 Civil.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

State of Alaska, plaintiff,
vs.
6.313 acres, more or less, Lars W. Ehrlander, et al, defendants.
Case No. 4FA-86-886

December 7, 1987 TRIAL on 1986 value. (impaired and absent improvements)
Judge Blair, superior court judge

Mr. Vancil, counsel for the State
Mr. Satterberg, counsel for defendant.
(Mary Ehrlander Direct) *From 1987 trial transcript page 220:*

MR. VANCIL: Your Honor, then could I ask for the most explicit ruling you can give about the degree to which anything relating to the '83 to '85 temporary taking should be excluded, for instance . . .

. . .

THE COURT: No, all I ever ruled was that we're going to do this case based on the 1986 values.

MR. VANCIL: Yes, Your Honor.

THE COURT: So I don't know what you're saying as to I said something else.

MR. VANCIL: Well, Your Honor, I'm saying that as I understood your order, you were not going to allow us to talk about damages resulting from the 1983 to '85 taking and . . .

THE COURT: That's right and I'm not.

MR. VANCIL: . . . and those damages are presumed not to have occurred in this appraisal, so that if . . .

. . .

THE COURT: If Karl Sopp comes in and testifies that the property is worth "X" in 1985, $1,500,000.00 -- or '86, $1,5000,000.00 and that's based upon the fact it should have been zoned or platted in 1983 and Mr. Vancil (sic) walks away with a $1,500,000.00 verdict, that ends any discussion as far as additional damages except the ones that I've already indicated exist.

MR. SATTERBERG: Sure.

THE COURT: From '83 to '86, that is possible sales that could have taken place before '86 that would have been more and possible carrying charges or things of that nature the he's talked about.

MR. VANCIL: My problem, Your Honor, is that the appraisers have different assumptions. The State appraisers do not assume anything other than we have an '86 taking of unimproved property. The consequence of that difference is large.

. . .

THE COURT: The highest and best use was a subdivision in 1986 and the Borough should have granted a plat to allow that to be used as a subdivision in 1986, which I guess everybody agrees they should have done. . . .

THE SUPREME COURT OF THE STATE OF ALASKA

State of Alaska, Department of Transportation and Public Facilities, Appellant and Cross Appellee,

v.

Lars Ehrlander, Appellee and Cross Appellant.
Superior Court No. 4FA-86-2287
Supreme Court No. S-6075/6076/7135
4-30-96 ORDER

DENIED: Motion to amend points on appeal -- motion to merge and stay, and oppositions -- motion to waive final judgment in the 886 case, to merge (2287 & 886) -- motion to enforce AS 34,60,120 (3) -- motion for judgment on *Klopping* damages -- motion for compensation

for the improvements -- motion to enforce the Bifurcation Agreement -- motion for the highest and best use.

THE SUPERIOR COURT FOR THE STATE OF ALASKA

State of Alaska, Plaintiff,
v.
6.313 Acres, more or less;
and Lars W. Ehrlander, Defendant.
Superior Court Case No. 4FA-86-886 Civil

Judge Niesje J. Steinkruger
September 28, 1996

ORDER DENYING EHRLANDER'S CROSS-MOTION FOR CIVIL RIGHTS VIOLATIONS, EXTORTION, ETC.

The court having considered Ehrlander's Cross-Motion for Civil Rights Violations, Extortion, Etc., and the opposition of the State of Alaska,

IT IS HEREBY ORDERED that said motion is denied. Any Civil rights, extortion claims must be litigated in a separate action. The motion for reconsideration of the 8-26-96 Order is Denied.

Dated: 9-28-96
Signed Niesje J. Steinkruger, Judge of the Superior Court

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS

CONSTITUTIONAL PROVISIONS

Alaska Const. Art. 1. Sec. 1. Inherent rights. . . .all persons have natural rights to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law...

A.C. Section 6., Petition. The right of the people to petition the government shall never be abridged.

A.C. Section 7. Due Process. No person shall be deprived of life, liberty, or property, without due process of law. The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed.

A.C. Section 14. Searches and seizures. The right of the people to be secure in their persons, houses and other property, papers, and effects, against unreasonable searches and seizures shall not be violated.

A.C. Section 16. Civil Suits: Trial by jury. In civil cases where the amount in controversy exceeds two hundred and fifty dollars, the right to trial by a jury of twelve is preserved to the same extent as it existed at common law...

A.C. Sec. 18 Eminent domain. Private property shall not be taken or damaged for public use without just compensation.

US Constitution Article 3, Section 2. The judicial power shall extend to all cases. No State may infringe on rights protected by the US Constitution.

Article 4 Sec. 1, 2. Citizens of each State shall be treated equally.

Article 6. This Constitution, and the Laws of the United States which shall be made under the authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding.

Amendment 1. Congress shall make no law ... abridging ... the right of the people .. to petition the Government for a redress of grievances.

Amendment 5. Due process; eminent domain. ... nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment 7. In suits at the common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

Amendment 8. ... nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment 11. The judicial power of the united States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any foreign State.

Amendment 13. Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Amendment 14. Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTES

AS 09.10.070 Establishing Equitable Estoppel. Reliance on misrepresentations result in a party's failing to pursue a remedy timely.

Equitable Tolling. There is no need to pursue two similar remedies at the same time.

AS 09.25.010 Statute of Frauds (a) In the following cases and under the following conditions an agreement, promise, or undertaking is unenforceable unless it or some note or memorandum of it is in writing and subscribed by the party charged or an agent of that party...

AS 09.25.020 Exemptions to statute of frauds. A contract, promise, or agreement which is subject to AS 09.25.010, which does not satisfy the requirements of that section, but which is otherwise valid is enforceable if

(1) there has been full performance on one side accepted by the other in accordance with the contract; or

(2) there is a memorandum which would satisfy the requirements of AS 09.25.010 except for error or omission in the recital of past events; or

(3) there is a memorandum which would satisfy the requirements of AS 09.25.010 except for error or omission which could be corrected by reformation if it occurred in a formal contract; or (4) the party against whom enforcement is sought admits, voluntarily or involuntarily, in pleadings or at any other stage of this or any other action or proceeding the making of an agreement;

AS 09.40.230 Authorization for injunction. (2) the defendant is doing, or threatens or is about to do, or is procuring or suffering to be done some act in violation of the plaintiff's rights concerning the subject of the action and tending to render the judgment ineffectual.

AS 09.45.630 Actions for recovery of real property. A person who has a legal estate in real property and has a present right to the possession of the property may bring an action to recover the possession of the property with damages for withholding it.

AS 09.55.310 (1), (2) Hearing.

(1) the value of the property sought to be condemned, and all improvements on it pertaining to the realty, and of each separate estate or interest in it; if it consists of different parcels, the value of parcel and each estate or interest in each parcel shall be separately assessed.

(2) if the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned, and the construction of the improvements in the manner proposed by the plaintiff...

AS 09.55.320 Right to a jury trial as to damages and value of property. An interested party may appeal the master's award of damages and valuation of the property, in which case there shall be a trial by a jury on the question of the amount of damages and the value of the property, unless the jury is waived by the consent of all parties to the appeal.

AS 09.55.330 Compensation and Damages. For the purpose of assessing compensation and damages, the right to them accrues at the date of issuance of the summons, and its actual value at that date is the measure of compensation of the property to be actually taken, and the bases of damages to property not actually taken but injuriously affected in the case where the damages are allowed....

AS 09.55.370 Final order of condemnation. When payments have been made and the... the court shall make a final order of condemnation...

AS 09.55.430 Content of Declaration of Taking. (3) A description of the property sufficient for the identification of it;

AS 09.55.460 (b) Effect of appeal. The plaintiff may not be divested of a title or possession acquired except where the Court finds that the property was not taken by necessity for a public use or purpose in a manner compatible with the greatest public good and the least private injury. In the event of that finding, the court shall enter the judgment necessary to (1) compensate the persons entitled to it for a period during which the property was in the possession of the plaintiff... restore the property to the condition in which it existed at the time of the filing of the declaration of taking unless such restoration is impossible, in which case the court shall award damages to the proper persons as compensation for any diminution in value of the property caused by the plaintiff's wrongful possession.

AS 24.40.010 Invalidity generally. A conveyance or assignment, in writing or otherwise, of an estate or interest in lands, or in goods, or things in action, or of rents or profits issuing from them or a charge upon land, goods, or things in action, or upon the rents or profits from them, made with the intent to hinder, delay, or defraud creditors or other persons of their lawful suits, damages forfeitures, debts, or demands, or bond, or other evidence of debt given, action commenced, decree or judgment suffered, with the like intent, as against the persons so hindered, delayed, or defrauded is void.

AS 34.40.090 Fraudulent intent question of fact. The question of fraudulent intent in a case arising under the provisions of this chapter is a question of fact, and not of law.

AS 34.55.004 Fraudulent and prohibited practices. It is unlawful for a person, in connection with the offer, sale or purchase of subdivided land directly or indirectly, to knowingly

(1) employ a device, scheme, or artifice to defraud;

(2) make an untrue statement of a material fact or omit a statement of a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading; or

(3) engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon a person.

AS 34.55.046 Definitions. (7) "subdivision" and "subdivided land" means land that is divided or is proposed to be divided for the purpose of disposition into two or more lots, parcels units, or interests and also includes any land whether contiguous or not if two or more lots, parcels units, or interests are offered as a part of a common promotional plan of advertising and sale; if the land is contiguous or is known, designated, or advertised as a common unit or by a common name, the land shall be presumed, without regard to the number of lots covered by each individual offering, as being offered for disposition as part of a common promotional plan.

AS 34.60.040 Relocation payments.

(1) actual expenses in moving a person, the person's family, business ...

(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business...

(3) actual reasonable expenses in searching for a replacement business. (c) A displaced person eligible for payment under (a) of this section who is displaced from a place of business ... and who elects to accept the payment authorized by this subsection in place of the payment authorized by (a) of this section, may receive a fixed payment amount equal to the average annual net earnings of the business ... except that this payment shall not be less than $1,000.00 or more than $20,000.00.. 10

AS 34.60.070 Expenses incidental to transfer of property. ... The State agency... shall reimburse the owner, to the extent the department considers fair and reasonable, for expenses necessarily incurred for

(1) recording fees, transfer taxes, and similar expenses incidental to conveying the real property to the state agency;... AS 34.60.080. Litigation expenses. (a) (c) ... agency ... shall award ... a sum that will in the opinion of the court reimburse the owner for reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceeding.

AS 34.60.090 Relocation services. (4) assist a person displaced from the person's business or farm operation in obtaining and becoming established in a suitable replacement location;...

AS 34.60.120(3) Do not consider Decreases caused by the project. "A decrease in the value of property caused by the public improvement for which the property is acquired or by the likelihood that the property

would be acquired for the improvement must be disregarded in determining just compensation."

(9) If the acquisition of only part of the property would leave its owner with an uneconomic remnant, an offer to acquire the entire property shall be made.

AS 34.60.130. Uniform acquisition policy for improvements. ... if a state agency acquires any interest in real property, the state agency must acquire at least an equal interest in all buildings, structures or other improvements located upon the real property which the state agency requires to be removed from the real property or which the state agency determines will be adversely affected by the use to which the real property will be put.

(b) For the purpose of determining just compensation to be paid for a building, structure, or other improvement required to be acquired under (a) of this section, the building , structure, or other improvement is considered to be a part of the real property to be acquired. ... and the fair market value which the building, structure, or improvement contributes to the fair market value of the real property to be acquired...

AS 34.60.150 Definitions. (1) "business" means any lawful activity...

AS 44.88.38 Personal liability. An officer, employee, or agent of the authority may not be held personally liable in a civil action for damages for an act done or omitted in good faith while performing the functions of office, employment, or agency under this chapter. **USCS 23 Sec. 127** (b) -- *Reasonable access.* No State may enact or enforce any law denying reasonable access to motor vehicles subject to this title to and from the Interstate

USC 28 Sec. 1331 The district court shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

USC 28 Sec. 1343 (a) (1, 2, 3, 4,) Civil rights and elective francise

(a) The district court shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the depravation, under color of law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any act of congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

USC 28 Sec. 1347 Partition action where United States is joint tenant. The district court shall have original jurisdiction of any civil action commenced by any tenant in common or joint tenant for the partition of lands where the United States is one of the tenants in common or joint tenant.

USC 28 Sec. 1358 The district court shall have original jurisdiction of all proceedings to condemn real estate for use of United States or its departments or agencies

USC 28 Sec. 1367 Supplemental Jurisdiction

(a) Except as provided in subsection (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include all claims that involve the joinder or intervention of additional parties.

(c) The district court may decline to exercise supplemental jurisdiction over a claim under subsection (a) if--

(1) the claim raises novel or complex issues of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

USC 28 Sec. 1991, 1992, 1995

USC 42 Sec. 1455(c)(1)

USC 42 Sec. 4625

USC 42 sec. 1983 Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purpose of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

USC 42 Sec. 1985 (2) ...if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any matter, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, ...

USC 42 Sec. 1986 Action for neglect to prevent.

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action . . . . but no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

FEDERAL REGULATIONS

49 CFR Sec. 24.101 -- Real Property Acquisition

Sec. 24.101 Applicability of acquisition requirements.

(a) *General.* The requirements of this subpart apply to any acquisition of real property for a Federal program or project, and to programs and projects where there is Federal financial assistance in any part of project cost except for: . . . .

49 CFR Sec. 24.102 -- Basic acquisition policies

(k) *Uneconomic remnant.* If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. (See Sec. 24.2 (w).)

(l) *Inverse condemnation.* If the Agency intends to acquire any interest in real property by exercise of eminent domain, it shall institute formal condemnation proceedings an not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

49 CFR Sec. 24.103 -- Criteria for appraisals

(a)(2) An adequate description of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property.

(3) All relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. When sufficient market sales data are available to reliable support the fair market value for the specific appraisal problem encountered, the agency, at its discretion, may require only the market approach. if more than one approach is utilized, there shall be an analysis and reconciliation of approaches to value that are sufficient to support the appraiser's opinion of value.

(5) (b) Influence of the project on just compensation. To the extent permitted by applicable law, the appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than due to physical deterioration within the reasonable control of the owner.

(e) *Conflict of interest.* No appraiser or review appraiser shall have any interest, direct or indirect, in the real property being appraised for the Agency that would in any way conflict with the preparation or review of the appraisal. Compensation for making an appraisal shall not be based on the amount of the valuation. . . .

49 CFR Sec. 24.304 -- *Reestablishment expenses – nonresidential moves*

In addition to the payments available under Sec. 24.303 of this subpart, a small business, as defined in Sec. 24.2(t), farm or nonprofit organization may be eligible to receive a payment, not to exceed $10,000, for expenses actually incurred in relocating and reestablishing

such small business, farm or non profit organization at a replacement site.

49 CFR Sec. 24.306 -- Fixed payments for moving expenses -- nonresidential moves.

(a) *Business.* A displaced business way be eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses provided by Sub Sec. 24.303 and 24.304. Such fixed payment, except for payment to a nonprofit organization, shall equal the average annual net earnings of the business, as computed in accordance with paragraph (e) of this section, but not less than $1,000 nor more than $20,000. . . .

RULES

Rule 72 (3)-- **Dismissal of Action**. *By order of the court.* Any time before compensation for property has been determined and paid, the court may dismiss the action as to that property after motion and hearing, except that the court may not dismiss the action as to any part of the property of which the plaintiff has taken possession or in which the plaintiff has taken title or a lesser interest, but shall award just compensation for the possession, title or lesser interest taken. . .

Rule 72 (5)f – Amendment of Pleadings. The plaintiff may amend the complaint without leave of court at any time before trial of the issue of compensation and as many times as desired . . . .

Rule 72(2)(iv) – a description of the property to be taken sufficient to identify and locate it; that each interest taken, to "each separate piece" of property be specified.

MISCELLANEOUS

Right to earn livelihood – A property right.

Fraud in consideration -- Misrepresenting something being bought or sold. By benefiting from half of the Bifurcation Agreement, the State purchased developed land at the price of undeveloped land.

Chapter 17.10.020 Jurisdiction; "Subdivision" Defined.
Fraud in inducements -- inducing us, in order to compromise our position, to enter an agreement that the state had no intention of honoring.

EVIDENCE OF ISSUES BIFURCATED

ACQUISITION SERVICES, INC.

Mr. Gary Vancil, Attorney
P. O. Box 75373
Fairbanks, AK 99707

December 3, 1987

Re: Appraisal of Parcel 20-A [Ehrlander)
Project No. RS-RRS-M-OOOSIS2)
Geist Road Extension: Peger to College

CHANGE TO CONDITIONS AND SERVICES:

Mr. Hoagland, state appraiser April 13, 1988.

This Amendment is necessary to provide a concise written report on parcel 20A to establish the following facts: (1) The date of taking the court alleges took place prior to the State's date of taking on said parcel; (2) To determine whether any business losses occurred as alleged by inverse proceedings; (3) To provide engineering costs; (4) To determine compensation, if any. (5) To determine if any diminution of value to property took place as a result of taking; and (6) To establish damages, if any. . . .

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

LARS EHRLANDER,
Plaintiff,
v.
STATE OF ALASKA, DEPARTMENT
OF TRANSPORTATION AND PUBLIC FACILITIES,
Defendants.

Case No. 4FA-86-2287 Civil
Case No. 4FA-86-886 Civil

RESERVATION OF FEDERAL CLAIMS AND ISSUES FOR FEDERAL COURT

COMES NOW Lars Ehrlander, by and through his counsel Robert John the Law Offices of William R. Satterberg, Jr., and hereby notifies this Court that he intends to pursue any federal constitutional or statutory claims in federal court following the conclusion of State court proceedings in this matter. Accordingly, to the extent that Lars Ehrlander's federal law claims and issues have not been previously addressed and determined in this matter and may otherwise be pursued against the State and others in federal court following the conclusion of proceedings in this matter, Lars Ehrlander reserves such claims and issues for determination in federal district court following the conclusion of this case. Correspondingly, Lars Ehrlander reserves the right to petition to the United States Supreme Court for a writ of certiorari in this case concerning those federal claims and issues which are not reserved for federal court following the conclusion of this case.

While Lars Ehrlander may refer to decisions of the United States Supreme Court and other courts concerning federal constitutional and statutory claims and issues, any such references have not been intended to and are not intended to constitute the litigating of

a federal claim or issue. Rather, such references to decisions of the United States Supreme Court and other courts concerning federal claims and issues are made solely for their persuasive authority.

DATED this 7th day of August, 1992, at Fairbanks, Alaska.

THE LAW OFFICE OF WILLIAM R. SATTERBERG, JR.

BY Robert John
Attorney for Lars Ehrlander

EVIDENCE OF IMPAIRMENTS

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

Lars Ehrlander , plaintiff,
v.
State of Alaska and Public Facilities, Defendants.

Case No. 4FA-86-2287 Civil

AFFIDAVIT OF GLENN POTTS, State appraiser

Glenn Potts, being first duly sworn, deposes, and says:

1. He has knowledge of the facts herein.

2. I was employed by the State of Alaska as a real estate appraiser in 1983 and 1984. In this capacity, I was asked by the State in late 1983 or early 1984 to establish the fair market value of an area of Lars Ehrlander's property south of the proposed Geist Road Extension which the State was contemplating selling to Golden Valley Electric Association after the State acquired the property from Mr. Ehrlander.

3. After thoroughly examining the area and the pertinent market, I estimated that the fair market value of the property was $4.50 per square foot, as set forth in Exhibit 1 to this affidavit.

4. Property such as that which Lars Ehrlander sought to subdivide for residential purposes in 1983 and 1984, but could not due to the pendency, of the State's Geist Road Extension (now the Johansen Expressway), is particularly vulnerable to substantially impaired marketability due to pending acquisition by the State since families and other with long term housing needs rarely, if ever, desire to purchase, lease, rent, or otherwise obtain an interest in property when that interest may be destroyed in a forthcoming condemnation, necessitating those persons to incur the hardships attendant in moving and obtaining other property to satisfy their housing needs.

5. The Alaska Statutes, AS 34.60.120(3) (Exhibit 4), requires that for just compensation purposes property be appraised without including any decrease in value due the pendency of the project for which it is eventually acquired. The State of Alaska's appraisal by Gary Hoagland which the State utilized in the formal condemnation case, 4FA-86-886 Civil, however, failed to exclude the decrease in value .to Lars Ehrlander's property resulting from the pendency of the Geist Road Extension, but instead specifically included the decreased, depressed value in its determination of just

compensation. This fundamental error in Mr. Hoagland's appraisal is evident on its very face as indicated in the cover letter to the appraisal, a copy of which is attached as Exhibit 2 to this affidavit. Only by virtue of the Stipulation and Order (Exhibit 3) reserving for the above-captioned case the damages to Mr. Ehrlander's property due to the pendency of the State's Geist Road Extension, could the prejudicial effects of Mr. Hoagland's appraisal and testimony be cured.

FURTHER AFFIANT SAYET NAUGHT.

Sworn on December 11, 1991 Glen Potts, Affiant

Value of Ehrlander's Property - Estimate (by Glen Potts)

It is estimated that the Right of Way (ROW) will encompass 3.8± acres or 165,000 sq. ft. and an uneconomic remainder of 3.5± acres or 152,460 sq. ft. will lie between the road and railroad. Due to actions initiated by the Borough without the Department of Transportation's (DOT & PF) concurrence, this Ehrlander property of 23.3± acres was only Partially subdivided. It is assumed that the property must be appraised as though totally subdivided and DOT & Pf. were purchasing individual lots on the basis of $4.50 per sq. ft. Prior to deriving a value for the areas needed for the project, net subdivision lot areas must be calculated and development cost not incurred to date must be subtracted from the gross square foot lot cost. After all these factors are considered, it is my opinion that the value of the ROW is $330,000.

and the damaged uneconomic remainder is $290,000 for a total of $620,000.

The potential value of the uneconomic remnant in assemblage to the Golden Valley Electric Association (GVEA) holdings with an industrial use is estimated to be $1.00/sq. ft. or $152,460. the degree of need that GVEA might have for this parcel is unknown. They have indicated a desire to purchase at a bargain price. I will assume that a price of 50 cent on the dollar would be a sufficient amount to entice GVEA to purchase. Therefore, the value of the remainder is $75,000(R.).

Signed Glenn Potts

EVIDENCE OF THE PROPERTY BEING IMPROVED

CITY OF FAIRBANKS

February 5, 1987

Subject: Royal Court Village

Dear Mr. Ehrlander:

In response to your recent inquiry, sewer and water connection charges were calculated on the basis of the City providing water for distribution and sewer treatment service to the property as shown on the attached preliminary plat for Royal Court Village. The charges were specified in the annexation ordinance (see attached Ordinance No. 4265, adopted September 12, 1983) and payment was received in the

full amount of $44,137.22 on July 5, 1984. The sewer and water system constructed has the capability of providing sewer and water service to the entire subdivision as shown on the preliminary plat.

Sincerely, J, C. Phillips, City Engineer

"The Golden Heart City"